

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSIE MENDOZA,

Defendant.

Case No. 2:16-cr-00324-LRH-GWF

**ORDER**

This matter is before the Court on Defendant's Motion for Leave to File Untimely Pretrial Motion (ECF No. 47), filed on March 17, 2017. The Government filed a Response (ECF No. 49) on March 23, 2017 and Defendant filed a Reply (ECF No. 50) on March 27, 2017.

Local Rule 26-4 governs the extension of scheduled deadlines. LR 26-4 states the following:

A motion or stipulation to extend any date set by the discovery plan, scheduling order, or other order must, in addition to satisfying the requirements of LR 6-1, be supported by a showing of good cause for the extension. A motion or stipulation to extend a deadline set forth in a discovery plan must be received by the court no later than 21 days before the expiration of the subject deadline. A request made within 21 days of the subject deadline must be supported by a showing of good cause. A request made after the expiration of the subject deadline will not be granted unless the movant also demonstrates that the failure to act was the result of excusable neglect.

Here, Defendant seeks leave to file a motion to dismiss and acknowledges that the motion is indeed untimely because the pretrial motions deadline passed on February 17, 2017. Nevertheless, Defendant seeks to file the motion to dismiss and asserts that his failure to timely do so was the result of his attorney's neglect. Defendant asserts that the motion to dismiss presents purely issues of law, is needed to preserve the record, and will not prejudice the Government. The Government argues that the Court should not allow Defendant's untimely motion because it is in fact over a

1 month late and because the arguments raised by the motion are meritless. While the Court  
2 acknowledges that Defendant's motion is untimely, it finds that the prejudice caused if Defendant  
3 were unable to raise his arguments exceeds any potential prejudice to the Government.

4 Accordingly,

5 **IT IS HEREBY ORDERED** that Defendant's Motion for Leave to File Untimely Pretrial  
6 Motion (ECF No. 47) is **granted**.

7 **IT IS FURTHER ORDERED** that the Clerk of Court is ordered to file Defendant's Motion  
8 to Dismiss Count Three attached as Exhibit A to Defendant's Motion for Leave (ECF No. 47).

9 **IT IS FURTHER ORDERED** that the Government shall file a response no later than **April**  
10 **12, 2017**.

11 **IT IS FURTHER ORDERED** that Defendant shall file a reply no later than **April 19,**  
12 **2017**.

13 DATED this 29th day of March, 2017.

14  
15   
16 GEORGE FOLEY, JR.  
17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28